

1 HB42
2 215312-1
3 By Representative Allen
4 RFD: State Government
5 First Read: 11-JAN-22

8 SYNOPSIS: Existing law relating to the adoption of new
9 rules by agencies grants the Joint Committee on
10 Administrative Regulation Review discretionary
11 authority to approve, disapprove, or recommend
12 changes to an agency's proposed rule, or to render
13 no action and approve an agency's proposed rule by
14 implication.

15 The existing review process for proposed
16 rules also requires that: (1) proposed rules that
17 have an economic impact on businesses must be
18 accompanied by a Business Impact Analysis detailing
19 the proposed rule's estimated impact on businesses;
20 and (2) proposed rules that have any economic
21 impact must be accompanied by a fiscal note
22 detailing the rule's impact on the state, its
23 governmental and non-governmental entities, and its
24 residents, generally. The joint committee, upon
25 receipt of these materials, may exercise its
26 discretionary power to require the agency to

1 consider the feasibility of alternatives with less
2 economic impact.

3 This bill would set a minimum threshold for
4 a proposed rule's economic impact where, if the
5 total costs estimated within the fiscal note
6 detailing the proposed rule's impact exceeds a \$1
7 million threshold, the rule shall not take effect
8 absent a joint resolution of approval by the
9 Legislature, or submission to the joint committee
10 for approval of a germane modification to the rule
11 to reduce costs below the threshold. If that
12 estimate exceeds \$750,000, the Legislative Services
13 Agency, Fiscal Division, would perform an analysis
14 of the veracity and accuracy of the fiscal note.

15 This bill would also allow any member of the
16 Legislature or the joint committee to request that
17 the joint committee require an agency to prepare
18 and submit a Business Impact Analysis.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 Relating to administrative procedure; to amend
25 Sections 41-22-5.1, 41-22-5.2, and 41-22-23 of the Code of
26 Alabama 1975; to set a minimum threshold for a proposed rule's
27 economic impact; to set measures to reduce the cost of

1 proposed rules below that threshold; to require approval by
2 the Joint Committee on Administrative Regulation Review for
3 any rule with costs above that threshold to take effect; and
4 to allow a member of the Legislature to petition the joint
5 committee to request a Business Impact Analysis without
6 prompting by a business.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 41-22-5.1, 41-22-5.2, and
9 41-22-23, Code of Alabama 1975, are amended to read as
10 follows:

11 "§41-22-5.1.

12 "(a) This section and Section 41-22-5.2 shall be
13 known and may be cited as "The Red Tape Reduction Act."

14 "(b) When an agency files a notice of intent to
15 adopt, amend, or repeal any rule, the agency shall make its
16 best efforts to notify the public of the proposed rule. At a
17 minimum, when the agency files the notice of intent, the
18 agency shall post the text of the rule the agency proposes to
19 adopt, amend, or repeal on its website or, if the agency has
20 no website, on a website operated or maintained by the
21 executive branch. Additionally, when the agency files a notice
22 of intent to adopt, amend, or repeal a rule, the agency shall
23 electronically notify any person who has registered with the
24 agency his or her desire to receive notification of any
25 proposal by the agency to adopt, amend, or repeal a rule.

26 "(c) If, prior to the end of the notice period, a
27 business notifies an agency that it will be negatively

1 impacted by an action proposed under subsection (b), the
2 agency shall prepare and submit to the committee the
3 information provided by the affected business as well as a
4 business impact analysis of the proposed action. The analysis
5 shall estimate the number of businesses subject to the
6 agency's proposal as well as the projected reporting,
7 recordkeeping, and other administrative costs required for
8 compliance with the proposal. An agency shall prepare the
9 business impact analysis using information available to the
10 agency in the normal course of business and utilizing the
11 expertise and experience of existing agency employees.

12 "(d) If, prior to the end of the notice period, any
13 member of the Legislature or the joint committee notifies the
14 committee that he or she wishes the agency to prepare and
15 submit to the committee a business impact analysis as
16 described in subsection (c), the committee may, upon a
17 majority vote of the committee, require the agency to prepare
18 and submit the statement.

19 ~~"(d)~~ (e) After receiving a business impact analysis
20 from an agency, the committee may require the agency to
21 analyze and report to the committee the feasibility of some or
22 all of the following methods of reducing the impact of the
23 rule on businesses:

24 (1) The establishment of less stringent compliance
25 or reporting requirements for businesses.

1 "(2) The establishment of less stringent schedules
2 or deadlines for compliance or reporting requirements for
3 businesses.

4 "(3) The consolidation or simplification of
5 compliance or reporting requirements for businesses.

6 "(4) The establishment of performance standards for
7 businesses to replace design or operational standards required
8 in the rule.

9 "~~(e)~~ (f) The agency shall state in the business
10 impact analysis whether the proposed rule is proposed as a
11 result of a requirement issued by a federal agency or
12 self-regulatory organization or an act of the Legislature to
13 administer a non-discretionary tax, license, fee, or penalty.

14 If so, the agency shall submit information identifying the
15 specific requirement issued by the federal agency or
16 self-regulatory organization or required by an act of the
17 Legislature.

18 "~~(f)~~ (g) A business impact analysis required to be
19 filed pursuant to this section shall be filed with the
20 Legislative Services Agency, Legal Division, at the same time
21 as the certified rule is filed and shall be available for
22 public inspection.

23 "~~(g)~~ (h) Each agency that files a business impact
24 analysis, at the time it is filed, shall place that statement
25 on its website in a location that is easily accessible by the
26 general public, or, if the agency does not have a website, on
27 a website operated or maintained by the executive branch.

1 "~~(h)~~ (i) If the committee determines that an agency
2 or a division of an agency exists primarily to perform
3 certification or licensing-related functions, the agency is
4 not required to comply with this section unless the committee
5 determines in writing that an agency's proposal has such a
6 negative impact on businesses that the filing of a business
7 impact analysis is warranted. Notwithstanding subsection (c)
8 of Section 41-22-6, which provides that a rule is effective 45
9 days after notice that the agency filed the certified rule
10 with the Legislative Services Agency, Legal Division, is
11 published in the Alabama Administrative Monthly, in any case
12 in which the committee determines that the filing of a
13 business impact analysis is warranted as provided in this
14 section, the effective date of the rule shall be 45 additional
15 days after the effective date specified in subsection (c) of
16 Section 41-22-6. In all other respects, the remainder of this
17 chapter shall continue to apply to the proposed rule.

18 "~~(i)~~ (j) An agency or department shall fulfill any
19 request for license or permit within ~~28~~ (30) calendar days
20 after receiving the application or notify the applicant of the
21 reason for failure to issue the license or permit.

22 "~~(j)~~ (k) An agency is not required to comply with
23 this section if the proposed rule is being adopted in order
24 for the agency to comply with membership requirements in a
25 multi-state or national membership organization.

1 ~~"(k)~~ (l) This section shall not apply to the
2 adoption of an emergency rule adopted pursuant to subsection
3 (b) of Section 41-22-5.

4 "§41-22-5.2.

5 "(a) Within five years of July 1, 2013, and every
6 five years thereafter, each agency shall review all agency
7 rules existing on that date to determine whether the rules
8 should be continued without change, or should be amended or
9 rescinded , and shall certify that the agency completed the
10 review to the Legislative Services Agency, Legal Division. The
11 ~~agency may indicate compliance with the requirements of this~~
12 ~~section by filing a notice in the Alabama Administrative~~
13 ~~Monthly certifying its compliance. If the head of the agency~~
14 ~~determines that completion of the review of existing rules is~~
15 ~~not feasible by the established date, the agency shall publish~~
16 ~~a statement certifying that determination.~~

17 ~~"(b) A rule adopted after July 1, 2013, shall be~~
18 ~~reviewed every five years in a manner consistent with~~
19 ~~subsection (a).~~

20 "(b) If an agency does not certify that the agency
21 has reviewed its rules within each five-year period pursuant
22 to subsection (a), the agency shall not adopt any new rules
23 within each five-year period pursuant to subsection (a),
24 unless those new rules are required to be adopted,
25 implemented, or amended pursuant to a requirement issued by a
26 federal agency, federal law, self-regulatory organization, or
27 required by an act of the Legislature.

1 "§41-22-23.

2 "(a) The notice required by subdivision (a)(1) of
3 Section 41-22-5 shall be given, in addition to the persons
4 named in the notice, to each member of the committee and such
5 other persons in the legislative department as the committee
6 requires. The form of the proposed rule presented to the
7 committee shall be as follows: New language shall be
8 underlined and language to be deleted shall be typed and lined
9 through. The notice may be provided in an electronic format.

10 "(b)(1) Within the 45-day period between the date of
11 publication in the Alabama Administrative Monthly that a rule
12 has been certified and the date it becomes effective, and
13 subject to subsection (h) of Section 41-22-5.1, the committee
14 shall study all proposed rules and may hold public hearings.
15 The committee may adopt a policy providing when a public
16 hearing will be held on a rule meeting specified criteria. In
17 the event the committee fails to give notice to the agency of
18 either its approval or disapproval of the proposed rule within
19 45 days after the notice is published in the Alabama
20 Administrative Monthly that the rule has been certified and
21 filed with the Legislative Services Agency, Legal Division,
22 pursuant to Section 41-22-6, the committee shall be deemed to
23 have approved the proposed rule for the purposes of this
24 section.

25 (2) In the event the committee disapproves a
26 proposed rule or any part thereof, it shall give notice of the
27 disapproval to the agency. The disapproval of any rule may be

1 appealed to the Lieutenant Governor in writing by the agency
2 that submitted the rule within 15 days of disapproval. The
3 Office of the Lieutenant Governor shall stamp the written
4 appeal to denote the date the appeal was received. If the
5 disapproval of a rule is appealed to the Lieutenant Governor,
6 the Lieutenant Governor, within the 15 days after the notice
7 of appeal of the disapproval of the rule is filed, may review
8 the rule and hold public hearings he or she determines
9 necessary.

10 "(3) If the Lieutenant Governor sustains the
11 disapproval of the rule, he or she shall notify the committee
12 and return the rule to the agency and the disapproval shall be
13 final.

14 "(4) If the Lieutenant Governor approves the rule,
15 he or she shall notify the chair of the committee. The rule
16 shall become effective upon adjournment of the next regular
17 session of the Legislature that commences after the approval
18 unless, prior to that time, the Legislature adopts a joint
19 resolution that overrules the approval by the Lieutenant
20 Governor and sustains the action of the committee.

21 "(5) If the Lieutenant Governor fails to either
22 approve or disapprove the rule within the 15 days after the
23 notice of appeal of the disapproval of the committee, the rule
24 shall be deemed approved and the rule shall become effective
25 upon adjournment of the next regular session of the
26 Legislature that commences after the deemed approval unless,
27 prior to that time, the Legislature adopts a joint resolution

1 that overrides the deemed approval of the Lieutenant Governor
2 and sustains the action of the committee. In the event the
3 Office of the Lieutenant Governor is vacant, a rule
4 disapproved by the committee shall be suspended until the
5 adjournment of the next regular session of the Legislature
6 following the disapproval. The rule shall be reinstated on
7 adjournment of that regular session unless the Legislature, by
8 joint resolution, sustains the disapproval.

9 "(c) The committee may propose an amendment to any
10 proposed rule and return it to the agency with the suggested
11 amendment. In the event the agency accepts the rule as
12 amended, the agency may resubmit the rule as amended to the
13 committee and the rule shall become effective on the date
14 specified in the rule, or on the date the amended rule is
15 submitted, whichever is later. In the event the agency does
16 not accept the amendment, the proposed amended rule shall be
17 deemed disapproved, as provided in subsection (b).

18 "(d) An agency may withdraw a proposed or certified
19 rule. An agency may resubmit a rule so withdrawn or returned
20 under this section with minor modification. Such a rule is a
21 new filing and subject to this section but is not subject to
22 further notice as provided in subsection (a) of Section
23 41-22-5.

24 "(e) The committee is authorized to review and
25 approve or disapprove any rule adopted prior to October 1,
26 1982.

1 "(f) A rule submitted to the committee which has an
2 economic impact shall be accompanied by a fiscal note prepared
3 by the agency and include a specific dollar amount of
4 anticipated economic impact in accordance with this
5 subsection. The fiscal note shall be resubmitted with any
6 changes when filing the certified rule. For any fiscal note
7 anticipating seven hundred fifty thousand dollars (\$750,000)
8 or more of implementation and compliance costs, the
9 Legislative Services Agency, Fiscal Division, within 21 days
10 of certification of the rule, shall provide to the committee a
11 brief analysis of the accuracy and veracity of the agency's
12 fiscal note and anticipated economic impact. Upon receiving
13 the fiscal note, and analysis, if any, the committee may
14 require additional information from the submitting agency,
15 other state agencies, or other sources. A state agency shall
16 cooperate and provide information to the committee. At a
17 minimum, the fiscal note submitted with a proposed rule shall
18 include the following:

19 "(1) A determination of the need for the rule and
20 the expected benefit of the rule.

21 "(2) A determination of the costs and benefits
22 associated with the rule and an explanation of why the rule is
23 considered to be the most cost effective, efficient, and
24 feasible means for allocating public and private resources and
25 for achieving the stated purpose.

26 "(3) The effect of the rule on competition.

1 "(4) The effect of the rule on the cost of living
2 and doing business in the geographical area in which the rule
3 would be implemented.

4 "(5) The effect of the rule on employment in the
5 geographical area in which the rule would be implemented.

6 "(6) The source of revenue to be used for
7 implementing and enforcing the rule.

8 "(7) A conclusion on the short-term and long-term
9 economic impact upon all persons substantially affected by the
10 rule, including an analysis containing a description of which
11 persons will bear the costs of the rule and which persons will
12 benefit directly and indirectly from the rule.

13 "(8) The uncertainties associated with the
14 estimation of particular benefits and burdens and the
15 difficulties involved in the comparison of qualitatively and
16 quantitatively dissimilar benefits and burdens. A
17 determination of the need for the rule shall consider
18 qualitative and quantitative benefits and burdens.

19 "(9) The effect of the rule on the environment and
20 public health.

21 "(10) The detrimental effect on the environment and
22 public health if the rule is not implemented.

23 "(11) Whether the proposed rule is proposed as a
24 result of a requirement issued by a federal agency or
25 self-regulatory organization or required to be adopted,
26 implemented, or amended by an act of the Legislature to
27 administer a non-discretionary tax, license, fee, or penalty.

1 "(g)(1) If the total economic impact estimated
2 within the fiscal note submitted with a certified rule exceeds
3 one million dollars (\$1,000,000) in implementation and
4 compliance costs, or if the Legislative Services Agency,
5 Fiscal Division determines that the estimated economic impact
6 exceeds one million dollars (\$1,000,000) in implementation and
7 compliance costs, the rule shall not take effect unless a
8 joint resolution of approval is passed by the Legislature or a
9 modification is approved by the joint committee pursuant
10 subdivision (2). This subdivision shall not apply to rules
11 required to be adopted, implemented, or amended as a result of
12 a change in federal law, a requirement issued by a federal
13 agency or self-regulatory organization, or as a result of an
14 act of the Legislature to administer a non-discretionary tax,
15 license, fee, or penalty.

16 "(2) The agency may submit to the committee for
17 approval a germane modification to the rule to reduce the
18 economic impact below one million dollars (\$1,000,000); if the
19 committee approves the proposed amendment, the rule shall take
20 effect as amended. The agency, in modifying the certified
21 rule, shall consider the following criteria:

22 "a. The establishment of less stringent compliance
23 or reporting requirements for businesses, governmental
24 entities, and individuals.

25 "b. The establishment of less stringent schedules or
26 deadlines for compliance or reporting requirements for
27 businesses, governmental entities, and individuals.

1 "c. The consolidation or simplification of
2 compliance or reporting requirements for businesses,
3 governmental entities, and individuals.

4 "d. The establishment of performance standards for
5 businesses or governmental entities to replace design or
6 operational standards required in the bill.

7 "~~(g)~~ (h) In determining whether to approve or
8 disapprove proposed rules, the committee shall consider the
9 following criteria:

10 "(1) Is there a statutory authority for the proposed
11 rule?

12 "(2) Would the absence of the rule or rules
13 significantly harm or endanger the public health, safety, or
14 welfare?

15 "(3) Is there a reasonable relationship between the
16 state's police power and the protection of the public health,
17 safety, or welfare?

18 "(4) Is there another, less restrictive method of
19 regulation available that could adequately protect the public?

20 "(5) Does the rule or do the rules have the effect
21 of directly or indirectly increasing the costs of any goods or
22 services involved and, if so, to what degree?

23 "(6) Is the increase in cost, if any, more harmful
24 to the public than the harm that might result from the absence
25 of the rule or rules?

1 "(7) Are the qualitative and quantitative benefits
2 to businesses, governmental entities, and individuals
3 outweighed by the estimated burden?

4 "~~(7)~~ (8) Are all facets of the rulemaking process
5 designed solely for the purpose of, and so they have, as their
6 primary effect, the protection of the public?

7 "~~(8)~~ (9) Any other criteria the committee may deem
8 appropriate."

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.